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2 to somebody like Brooks or you have offered it to people
3 whether they're taking it or not, that's sufficient to seek
4 interLATA relief.

5 So I think, you know, the question of whether
6 Brooks Fiber is providing service to business and residence
7 customers, you have to remember your rules require them to
8 serve both business and residence customers under Rulemaking
9 19. That is a relevant issue to determine whether or not
10 Track A is the way to go. And I'm sure it is of general
11 interest to see what the state of competition is in
12 Oklahoma. But under the law it is not a decisive factor.

13 VICE CHAIRMAN ANTHONY: Okay. Others have a
14 different opinion on that question. I know they will
15 address it. Thank you.

16 MR. TOPPINS: Another way to look at the
17 public interest is what impact the LATA boundaries have on
18 our customers today. We have a plan that this Commission
19 has approved, a calling plan, called the 32 Mile Circle
20 Saver Plan. And in a way it is sort of a create your own
21 wide-area calling plan, because if you buy this service, you
22 can call to communities in a 32 mile radius for reduced
23 rates. And that works great for the customers who have it
24 unless they're up against a LATA boundary. If the folks in
25 Cushing buy the service, they can call everybody on this
side of the LATA boundary because of the Federal law, but

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2 they can't call across the LATA boundary. And in this case
3 we think probably most folks are wanting to call Stillwater
4 and they are not able to do so. If the interLATA boundary
5 is removed, that service can provide full benefits to all
6 customers who subscribe to it. And this is not the only
7 situation. You can go up and down the LATA boundaries and
8 see other communities who have that situation.

9 Another one that's even more difficult to
10 explain to customers today is a plan that you all approved
11 last year, an optional calling plan called One-Plus Saver
12 Direct. And if you recall, that service allows you to call
13 another number and talk to that number an unlimited amount
14 of time for \$17 a month. So if you are a family in Lawton
15 and you send your son or daughter to college in Norman or
16 Stillwater, you can subscribe to this plan and call your son
17 or daughter for \$17 a month and speak to them as long as you
18 want. Or, vice-versa, the child can subscribe to the
19 service and call home. If you are a family in Tulsa,
20 however, and send your children to either of the state
21 schools, it does not work. The LATA boundaries prevent us
22 from offering that service. It is real difficult to explain
23 to folks who are in Lawton and may have sent one to college
24 in Stillwater and another to the University of Tulsa. It is
25 very hard to explain why they can get that service to OSU
but not across the LATA boundaries. So removing the

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2 interLATA boundary will help with that situation.

3 With respect to the legal issues, there are
4 three matters to be dealt with, the objections from the
5 IXC's who say that Southwestern Bell's statement of terms
6 and conditions which was filed under Section 252(F) should
7 be dismissed. And, as you have heard, the ALJ has
8 recommended that those objections be denied.

9 Second, if the ALJ's recommendation is
10 upheld, the second question is whether the statement of
11 terms and conditions should be permitted to go into effect
12 under 252(F). And, as you have heard, he has recommended
13 that it be permitted to go into effect.

14 The third issue is the 90 days advanced
15 notice issue. AT&T has asked that Bell be required to give
16 90 days advance notice of its filing at the FCC. It is our
17 position that the Commission cannot impose that requirement
18 and follow the plain language of the Federal Act which
19 provides that a Bell operated - - that on or after the date
20 of enactment of the Act, which was February 8th, 1996, a
21 Bell Operating Company or its affiliate may apply to the
22 Commission for authorization to provide interLATA services.

23 VICE CHAIRMAN ANTHONY: If we uphold Judge
24 Goldfield on that ruling, where can you appeal that
25 decision?

MR. TOPPINS: That's a good question. There

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2 is always a question under the Federal Act as to whether the
3 state constitution still applies and appeals go to the State
4 Supreme Court, or if the Federal Courts are the haven for
5 those who are having problems with the Federal Act. I would
6 have to think about that.

7 The IXC's will argue that you should dismiss
8 our application which was filed under Section 252(F) because
9 we intend to use the statement as the basis for seeking
10 interLATA relief. Let me just give you a copy of the
11 section that we are talking about, if it will be of any
12 assistance.

13 CHAIRMAN GRAVES: Thanks.

14 MR. TOPPINS: You will be told that
15 Southwestern Bell cannot use the statement of terms and
16 conditions in a Section 271 filing. And that is an
17 interesting argument. However, the argument has two flaws.
18 First, it is not relevant to the application for approval
19 for the FCC which is filed only under Section 252(F).
20 Second, the arguments are premature. As Judge Goldfield
21 ruled, they should be presented to the FCC when and if
22 Southwestern Bell files a 271 application.

23 The disposition of the objections begins and
24 ends with Section 252(F). The IXC's act like the SGTC has
25 only one purpose, to be used to support an application for
interLATA relief under 271. That argument ignores the other

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2 main purpose of the SGTC, and that is to put out a generally
3 available statement of terms and conditions that potential
4 competitors for the local exchange business can use to avoid
5 lengthy negotiations in the arbitration process. That, of
6 course, has nothing to do with Section 271 at all.

7 Section 252 allows us to file a statement of
8 terms and conditions with the Commission. It makes no
9 mention of Section 271. It does however go on to require
10 the Commission to act on the SGTC. It says, "The Commission
11 shall not later than 60 days after the date of such
12 submission complete its review or permit the statement to go
13 into effect." It doesn't say anything about 271. It
14 doesn't say that the Commission shall review it or permit it
15 to go into effect unless the Commission thinks it is going
16 to be used for 271 purposes.

17 As we know, a request for interLATA relief is
18 filed under Section 271. It is filed at the FCC, not with
19 this Commission. At the time when and if Southwestern Bell
20 files 271 filing at the FCC, and we would sure like to, make
21 no bones about that, these parties will be free to argue
22 that we should be proceeding under Track A or Track B at the
23 time in front of the FCC. It is not an appropriate argument
24 to defeat a 252(F) SGTC filing to speculate about what might
25 or might not happen at the FCC. I do not believe the IXC's
can point to any state that has dismissed a Section 252

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2 filing requesting review of a SGTC on any grounds.

3 What - - When you - - what - - We have talked
4 about the Track A versus Track B. I won't go back into
5 that. But what the IXC's really want you to do is dismiss
6 this SGTC. They have to go Track A, we can't go Track B.
7 It is just delay, delay, delay. When we get to the FCC they
8 will say, well, Track A really doesn't work, and even before
9 you go to the FCC, we would like you to throw in another 90
10 days before you can make the filing. If we truly are
11 interested in moving towards competition, we will try to get
12 these legal issues answered in the place where they need to
13 be.

14 If we permit the SGTC to go into effect, it
15 will have positive impacts on competition on three fronts.
16 First, it will make the statement available to local
17 competitors, as we have talked about. New companies will be
18 able to adopt it without the negotiations and the
19 arbitration process.

20 Second, if we are right, it will advance full
21 long distance competition in Oklahoma because we will take
22 it to the FCC and we will get interLATA authority and
23 customers will have an additional choice for their
24 interexchange carrier.

25 Third, and this is something that gets
overlooked a lot, it will enhance intraLATA competition,

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2 because as you all recall from the PUD 1159 agreement that
3 was approved, once we're permitted into the interLATA
4 business then the intraLATA one-plus pre-subscription starts
5 in this state and it will be full intraLATA competition as
6 well.

7 Next I would like to talk about the 90 day
8 ruling. And it may be a good thing, but I do want to
9 advance the arguments that it is not permissible without the
10 company's consent anyway to extend the time line. I will
11 give you a copy of the section we are talking about.

12 The Federal Act in Section 271(D)(1) allows a
13 Bell Operating Company to file a 271 application on and
14 after the date of enactment of the Telecommunications Act of
15 1996. Nothing in the Federal Act suggests or allows a state
16 commission or anybody else to override the Act by requiring
17 a 90 day advance notice period.

18 Now the ALJ indicated that this 90 day
19 advance notice period is similar to the Commission requiring
20 companies to give this Commission notice before it files,
21 say, a general rate case. There is a big difference. This
22 Commission can require companies to give advance notice
23 before people file things with this Commission. I
24 respectfully submit that this Commission can't change the
25 filing dates at the FCC. Those are set by the Congress.

Imagine if we had come to you last year when

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2 AT&T was asking for arbitration and suggested that AT&T
3 give 90 day notice before they filed their request for
4 arbitration so that we would have time to study it before
5 this short time period that the Federal law provided kicked
6 in. We know what that suggestion would be met with. It
7 would be cries that that's a barrier entry and we have got
8 to follow the law. That's exactly what we would have heard
9 last year.

10 The 90 day advance notice requirement is
11 anti-competitive because it slows down the entry of a Bell
12 Operating Company into the long distance business. If a
13 company is entitled to be in that business, it should not
14 only be permitted to file a 271 application, it should be
15 encouraged to get it on file and get the process going.

16 You will hear references probably, we have
17 heard them before, three weeks ago we heard that, you know,
18 if you look at the Ameritech filing, it's 6,000 pages, how
19 are you going to get through 6,000 pages in 20 days. A
20 couple of days ago a filing said it has 4,000 pages. I
21 don't know whether it is 4,000 or 6,000. I can tell you
22 when Southwestern Bell files, the bulk of the pages will be
23 agreements and things that you have all looked at before.

24 When you boil all the arguments down, they
25 fall into two categories. First, there is objections and
tactics by the long distance companies that have only one

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2 motivation, to keep another competitor at bay as long as
3 possible, or, two, they represent concerns by the Attorney
4 General and the Staff about whether there are enough
5 resources to get the job done under the time frames that
6 have been set by Congress. I believe you have to reject the
7 tactics by the IXC's because they're motivated by
8 anti-competitive reasons. With respect to the concerns
9 about the work load, no one ever said that this was going to
10 be easy. I have heard it said that the only place where
11 success comes before work is in the dictionary. To make
12 Oklahoma a success to bring competition to all facets of the
13 telecommunications industry and to advance the public
14 interest by providing as many choices as possible, it is
15 going to take hard work and it is going to take concentrated
16 hard work. The American people through their Congress have
17 spoken. They have said when a Bell Operating Company is
18 ready to file, you have got 90 days, FCC, to process the
19 application. If a company files on February 15th, we want
20 them in business by May 15th, not August 15th. That is the
21 law. It is a 90 day requirement, not 180 days as some are
22 arguing for now.

23 CHAIRMAN GRAVES: Well, but you are saying 90
24 days after you file you are automatically allowed in the
25 interconnection business?

MR. TOPPINS: If you meet the - -

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CHAIRMAN GRAVES: Oh, okay. So the FCC can say, I'm sorry, you didn't make it, and kick you back?

MR. TOPPINS: And they may do that.

CHAIRMAN GRAVES: Okay. So the American people gave them the choice of making a decision?

MR. TOPPINS: Absolutely.

CHAIRMAN GRAVES: Okay.

MR. TOPPINS: You have got 90 days to approve it or kick it out.

CHAIRMAN GRAVES: Okay.

MR. TOPPINS: So in closing I would ask that you continue the aggressive stance that you have taken on telephone competition issues going back to the local competitions rules last year and ask you to uphold the ALJ's recommendation and deny the objections to our statement of terms and conditions application, that you uphold his recommendation that you permit it to go into effect immediately, and that you reject the proposal for time frame for review of a Section 271 filing be doubled by imposing an illegal 90 day advance notice requirement.

The last thing I would point out, and this was mentioned this morning in another case, the Commission's own rules in Rule 165:5-1-6(B) states that statutory time limits cannot be extended by the Commission. And I'm sure the purpose of that is to say if this Commission has to do

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2 something by law, it can't extend it beyond that time
3 period. It should also apply on the other side. If the law
4 says you can file something at a certain time, I don't think
5 the Commission should be able to push that time frame
6 forward.

7 I would be happy to answer any other
8 questions.

9 CHAIRMAN GRAVES: Any other questions for Mr.
10 Toppins? If not, thank you, Mr. Toppins.

11 Mr. Rutan.

12 MR. MOON: Your Honors, with your permission,
13 we have reached an agreement to allow the AG to proceed
14 first.

15 CHAIRMAN GRAVES: Sure. That would be fine
16 with us.

17 MR. MOON: May it please the Commission, the
18 Attorney General appeals today only that portion of the
19 ALJ's oral ruling which recommended granting the company's
20 motion for an interim order permitting Southwestern Bell's
21 statement of terms and conditions to take effect
22 immediately. I will address that issue first, and then the
23 issue in 97-64.

24 Now the basis of our appeal in the 97-20 case
25 on the interim order issue, and with all due respect to the
Judge Goldfield, because I have the highest respect for him,

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2 but the basis of our appeal is that the ALJ erroneously
3 applied the standard by which motions are reviewed.

4 I'm not going to get into the merits of
5 Section 271 of the Federal Act. I already made that
6 argument below and it is in the record. Instead it is more
7 of a procedural error that was made, the Attorney General
8 believes, by the ALJ.

9 Referring to the Oklahoma Supreme Court's
10 opinion in Turpen, the Turpen decision, 769 P.2d 1309 at
11 page 1323, it states that the movant and not the parties
12 opposing the motion have the burden of proof, and, when the
13 motion is challenged, the burden of persuasion. Therefore,
14 on the company's motion for an interim order, Southwestern
15 Bell had the burden of proof to show the necessity for the
16 issuance of an interim order. Because of the challenge
17 brought by the other parties to the motion, the Company also
18 had the burden of persuading the Commission that the interim
19 order should be issued.

20 Contrary to, I believe, what the ALJ found,
21 this burden could not be met without considering Section 271
22 of the Federal Act. It is clear to the Attorney General
23 from the record below that the ALJ reversed both of these
24 burdens, the burden of proof and the burden of persuasion.
25 Rather than finding that Southwestern Bell had met its
burden of proof and of persuasion, the ALJ stated that the

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2 other parties, the parties opposing that motion, failed to
3 show why the motion should be denied. The moving party
4 carries the burden. And Southwestern Bell in this case
5 failed to carry this burden. Southwestern Bell did not
6 present any evidence, nor did they even argue that an
7 interim order is necessary to meet an exigent or urgent
8 situation.

9 MR. TOPPINS: I object to that, Your Honor.
10 We put a witness on that testified for about an hour that
11 day. And he talked about the public interest. You maybe
12 don't recall.

13 MR. MOON: No, I recall exactly what he
14 testified to. He did not testify as to any urgent situation
15 that this application or that their statement of terms and
16 conditions was meant to address. That's in the record. He
17 did talk about public interest.

18 COMMISSIONER APPLE: I wonder, who was the
19 witness?

20 MR. TOPPINS: Mr. Cleek.

21 CHAIRMAN GRAVES: Mr. Moon?

22 MR. MOON: Yes, Your Honor.

23 CHAIRMAN GRAVES: Mr. Toppins gave us 252(F),
24 a copy of that. Is that the only part of Section 252 that
25 deals with generally available terms? Or are there other
provisions of 252 that deal with that?

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2 MR. MOON: Just cite Section 271.

3 CHAIRMAN GRAVES: Is that the relevant
4 section? And I guess what I would be interested in seeing
5 is where in 271 is 252(F) referenced?

6 MR. MOON: It is referenced in Section 271.
7 It is in the Track B provisions of 271.

8 CHAIRMAN GRAVES: All right.

9 MR. MOON: I don't know the exact cite. It
10 is in 271(2)(B), I think.

11 MS. THOMPSON: (C)(1)(b).

12 CHAIRMAN GRAVES: So 252 is relevant to 271
13 only when you are seeking to invoke the authority of 271,
14 right?

15 MR. MOON: That's correct, Your Honor.

16 CHAIRMAN GRAVES: So if you are just seeking
17 to invoke Section 252 or comply with 252, you have to meet
18 the provisions of that particular section?

19 MR. MOON: Right. They're two separate
20 parts.

21 CHAIRMAN GRAVES: Right. Okay. So to that
22 extent I don't read anything in 252 that says there has to
23 be exigent circumstances, or emergency circumstances or some
24 sort of public interest met. It simply says a Bell
25 Operating Company may prepare and file a statement of terms
and conditions, and that a Commission may not approve it

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2 unless it complies with Sub-section D of this Section and
3 251, and then it says except as provided in Section 253.

4 And then it goes through some provisions. So how has this
5 application failed to meet the terms then of 252 and those
6 referenced sections?

7 MR. MOON: Okay, Your Honor. If it had just
8 been the application alone filed by Southwestern Bell, the
9 application for approval of the statement of terms and
10 conditions - -

11 CHAIRMAN GRAVES: Uh-huh.

12 MR. MOON: - - 271 would have come into play.
13 None of these other - - this appeal wouldn't be here today.
14 The reason for this appeal is that they also filed a motion
15 for an interim order. Now that in order to justify - -

16 CHAIRMAN GRAVES: Seeking to do what? I'm
17 sorry. I may be confused then.

18 MR. MOON: To allow those statements of terms
19 and conditions to go into effect immediately, not at the end
20 of any specified period under Section 252.

21 CHAIRMAN GRAVES: In theory then upon
22 approval by the Commission?

23 MR. MOON: Yeah. The Commission is going to
24 maintain jurisdiction to review those statements of terms
25 and conditions.

CHAIRMAN GRAVES: Right.

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2 MR. MOON: But in order to issue an order,
3 this Commission, you have got to have a reason to issue an
4 order. And so for this interim order, what other reason is
5 there to issue it prior to the 60 day review period that is
6 otherwise contained in Section 252. And that's what I'm
7 saying. They didn't meet any burden of proof or persuasion
8 to show the reason why this interim order is needed. They
9 say Section 271 is irrelevant, yet Mr. Toppins was up here
10 saying as the benefits of their statement of terms and
11 conditions being allowed to - -

12 CHAIRMAN GRAVES: So we are arguing over the
13 fact that they sought for immediate approval of their
14 filing?

15 MR. MOON: That's what we are objecting to.

16 VICE CHAIRMAN ANTHONY: Before the hearing on
17 the merits?

18 MR. MOON: Before the hearing on the merits
19 on the application itself, right.

20 MR. TOPPINS: We didn't seek approval. Just
21 that it goes into effect. We know it has to be approved.

22 CHAIRMAN GRAVES: I understand. I
23 understand. And that's what I'm saying, because the Section
24 3 says that not later than 60 days the Commission either
25 completes the review or allows it to take effect. Where are
we in the 60 days?

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2 MR. MOON: It was filed January 15th, I
3 believe.

4 CHAIRMAN GRAVES: So in a matter of a week or
5 two, or three, I guess, arguably it goes into effect?

6 MR. MOON: Yes, Your Honor.

7 CHAIRMAN GRAVES: And it is all mooted,
8 although we do note that Section 4 allows the Commission to
9 continue to review?

10 MR. MOON: That's correct.

11 CHAIRMAN GRAVES: The statement.

12 MR. MOON: Right. But it will go into effect
13 anyway at that time.

14 CHAIRMAN GRAVES: Right. Okay.

15 MR. MOON: And the basis of our appeal was
16 that there was no reason for - - The Company did not justify
17 any reason why it should go into effect prior to the - -

18 CHAIRMAN GRAVES: Well, I understand. So if
19 we adopt your position though, in three weeks it becomes - -
20 goes into effect anyway?

21 MR. MOON: That's correct.

22 CHAIRMAN GRAVES: Okay.

23 MR. MOON: It goes into effect. And then at
24 that time - - The 15 days gives them the short time period
25 that's already allocated to the state to review a 271
compliance filing. 15 days is a significant - -

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2 CHAIRMAN GRAVES: Well, we are not talking
3 about a 271 now. We're talking about 252 still, because in
4 my mind they are separate.

5 MR. MOON: Right.

6 CHAIRMAN GRAVES: Only when you seek to
7 invoke the authority and the opportunities under 271 are you
8 then subject to those particular time lines. My point is
9 anybody can file for a statement of general terms and
10 conditions.

11 MR. MOON: Right.

12 CHAIRMAN GRAVES: And if the Commission
13 doesn't complete its work in 60 days, and I'm presuming that
14 this allows us to say no, or to just simply say you can look
15 at it for 60 days and then it goes into effect whether you
16 like it or not, and I might be interested in some of the
17 opinions on that, because I guess we could say no and then
18 they would have to file some corrected version of it, but
19 presuming we don't take a position, it goes into effect?

20 MR. MOON: Correct.

21 CHAIRMAN GRAVES: And then whether or not you
22 have got some limited review time under 271 is the other
23 matter that is separate and apart, because in theory anybody
24 could file one of these or Bell could file one of these and
25 not seek 271 authority for two years.

MR. MOON: Correct.

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2 CHAIRMAN GRAVES: Okay.

3 VICE CHAIRMAN ANTHONY: All right. I want to
4 see if I'm following you.

5 MR. GRAY: I might offer the full text of the
6 Act. There was mention made back and forth. I believe you
7 only got one page. I offer it here. I believe Ms. Thompson
8 was kind enough to offer it if the Commission wanted to
9 review it while they are on the bench.

10 CHAIRMAN GRAVES: Okay. Thank you.

11 VICE CHAIRMAN ANTHONY: I want to go through
12 this. The application date was January 15th?

13 MR. MOON: Yes, Your Honor.

14 VICE CHAIRMAN ANTHONY: About 30 days has
15 gone by?

16 MR. MOON: Correct.

17 VICE CHAIRMAN ANTHONY: And we have got about
18 another 30 days left. And so what are we arguing about the
19 effectiveness going into effect prior to that when in the
20 scope of these things that's not such a long period of time?
21 What is your point?

22 MR. MOON: That's why - - From the Attorney
23 General's perspective, and I think the perspective of all
24 the other parties, Section 271 is inseparable from this
25 statement of terms and conditions because if you are to
approve the ALJ's recommendation today, Southwestern Bell

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2 has already stated as soon as tomorrow they're going to file
3 their 271 application and we no longer have 15 days in which
4 to approve or review this application before it goes into
5 effect. It's going to now come under Section 271 because
6 they're going to use it for their 271 application. They're
7 going to use their statement of terms and condition for
8 that.

9 VICE CHAIRMAN ANTHONY: Why do you think they
10 want the interim order with an immediate effective date?

11 MR. MOON: So that they can make their 271
12 application as soon as possible. Because they cannot make
13 it - - Apparently it is their opinion they won't be
14 successful in a 271 application without a statement terms
15 and conditions in effect in Oklahoma.

16 VICE CHAIRMAN ANTHONY: Okay. All right.
17 And I asked you that because sometimes we are faced with a
18 situation somebody comes in and gives us an emergency
19 application to drill a well and there doesn't seem to be any
20 opposition, so we sign it and then we're supposed to not
21 worry because the hearing on the merits will take place.
22 Well, when that well gets drilled, it is awful hard to
23 undrill it. And, sure, we have the right later to say in
24 the hearing on the merits, well, here is our real decision,
25 but we know that out there somebody has spent a lot of money
to drill a well. In other words, there is a certain

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momentum to these things when the Commission signs an order, whether it is an interim order or not. It seems to have some effect even on the ALJ's down below. I know you signed that interim order, I guess it has got some weight.

Now do you think that thought has any bearing on this? Is this another reason that people are reluctant to have the interim order issued? That it looked like the Commission is in motion and the ALJ's know that that's the way it ought to be?

MR. MOON: I'm not entirely sure if I follow what your reasoning is. I think - -

VICE CHAIRMAN ANTHONY: Well, that's all right. I will withdraw the question.

MR. MOON: Okay. I think what struck me is when you said sometimes the Commission will issue an emergency order in an oil and gas case to drill oil and when there is no opposition you go ahead and issue that order. But if there is opposition, not only does the applicant in that who wants to drill that well have the burden of proof to show why, but once it is challenged, if there is opposition, he has the burden of persuasion as well. There is two components to meeting - - to getting your application or your motion approved, the burden of proof, and if it is challenged the burden of persuasion. This is the challenge.

The ALJ found that the parties opposing

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2 didn't meet the burden of persuasion. He didn't make a
3 specific finding that Southwestern Bell met any of its
4 burden. In fact, the ALJ - - the only way that Southwestern
5 Bell could have met its burden of persuasion is by reference
6 to Section 271, because there is no justification for
7 issuing an interim order unless it is for Section 271.

8 They - - The other arguments made that this
9 application or the statement of terms and conditions has
10 benefits outside of Section 271 don't hold any water,
11 because they say for instance that it is going to make
12 available terms to, you know, other new competitors as they
13 come in. Those terms are already available because the
14 interconnection agreements are already there that the
15 statement of terms and conditions is based upon. The
16 arbitration order is already there that the statement of
17 terms and conditions are based upon.

18 CHAIRMAN GRAVES: So what is the problem then
19 of issuing a general statement?

20 MR. MOON: There is no problem in and of
21 itself.

22 CHAIRMAN GRAVES: Okay.

23 MR. MOON: The only problem is allowing it to
24 go into effect immediately when there is no need to. I
25 think it is against the Commission's - -

CHAIRMAN GRAVES: Well, wait a minute, now.

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2 Now I'm not sure I understand that, because you said it
3 doesn't matter because those terms are already out there
4 because there are already interconnection arrangements that
5 have been entered into. And if we then say there is no
6 problem then with the general statement of terms and
7 conditions because it is already there, and in and of itself
8 that is not a problem, that's okay, but you say the reason
9 they want to do it is so they can then turn around and file
10 a 271 application, well, if those terms and conditions are
11 already out there, then in your opinion there is really no
12 reason why they couldn't file a 271 application today?

13 MR. MOON: Except that the 271 application
14 criteria is - - involves more than just the statement of
15 terms and conditions.

16 CHAIRMAN GRAVES: Right.

17 MR. MOON: There is a 14 point competitive
18 check list.

19 CHAIRMAN GRAVES: Right.

20 MR. MOON: There is some other public
21 interest standards that have to be met. And it is going to
22 shorten - - They are already arguing against the 90 day
23 advance notice.

24 CHAIRMAN GRAVES: But that 271 application
25 then is going to be reviewed on a different criteria than
whether or not they have a general statement?

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2 MR. MOON: Right. The statement of terms and
3 conditions then I believe would be viewed under the
4 competitive check list in 271 and the other things.

5 CHAIRMAN GRAVES: Right.

6 MR. MOON: But that is not going to relieve
7 this Commission's burden. I believe you are going to have
8 to also review it under the criteria in Section 252 to the
9 extent that they're inconsistent with the criteria in 271
10 because it still - - they have asked for your review. This
11 application 97-20 is still going to be open. It is not
12 going to be closed when they file.

13 CHAIRMAN GRAVES: Well, I understand that.
14 But if you are saying the terms and conditions are already
15 out there in previously agreed to interconnections, isn't
16 that a pro forma decision on our part? Gosh, it is already
17 out there. What difference does it make if they put it in
18 one document or another? It's already there. Let's just
19 approve it and go on.

20 MR. MOON: Well, I'm not sure what the
21 evaluation of the statement and terms entails. But I do not
22 believe that just because they're based on things that this
23 Commission has approved in the past that they're going to
24 necessarily cover all of the issues that a statement of
25 terms and conditions is supposed to cover. There may be
some issues that have not been addressed in arbitrations or

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2 the interconnection agreements that this Commission has
3 approved.

4 Now, as I said, I think the 271 criteria is
5 applicable, very relevant. Southwestern Bell makes it
6 relevant in their application which initiated this cause.
7 And that's the only justification for granting this interim
8 order.

9 Now the ALJ did not even look at Section 271
10 when he granted this interim order, so there is no basis to
11 sustain the ALJ's decision. There is no proof to support
12 the motion. There is no persuasion offered by the movant
13 here in the face of the challenges brought in this case, so
14 the Attorney General urges the Commission to issue an order
15 denying the company's motion for an interim order on the
16 grounds that the Company failed to meet its burden of proof
17 and of persuasion to show the necessity for the issuance of
18 an interim order.

19 Now on the 97-64 matter, we would - - we have
20 no - - we're not going to present any objection to the ALJ's
21 recommendation there. I do want to make - - point out one
22 thing. Southwestern Bell in that case indicated or stated
23 that a 90 day advance notice period is contrary to the Act.
24 Your Honors, a 90 day advance notice period is not contrary
25 in and of itself to the Telecommunications Act, because, as
I stated this morning, Congress clearly intended or